PUBLIC FINANCE BHD.

v.

PUBLIC PROSECUTOR

HIGH COURT SABAH & SARAWAK
CHONG SIEW FAI J
[CRIMINAL APPLICATION NO. 4 OF 1988]
7 OCTOBER 1988

CRIMINAL PROCEDURE: *Criminal Appeal - Appellant/applicant not an accused or party to the criminal proceedings in the Magistrate's Court - Whether can appeal to the High Court - Section 307 of the Criminal Procedure Code - No right of appeal to the High Court.*

The appellant/applicant who intended to appeal to the High Court Sibu against the decision of the Magistrate Court at Sibu applied by notice of motion to the High Court Sibu for enlargement of time for filing the petition of appeal on the ground of mistake.

The affidavit filed in support of the notice of motion disclosed the fact that the accused person in the criminal case at the Magistrate Court Sibu was one Beh anak Nyelang charged and convicted of two offences under s. 33 of the Commercial Vehicle Licensing Board Act 1987 and s. 90 of the Road Transport Act 1987. The Magistrate also ordered the forfeiture of a vehicle owned by the appellant/applicant.

The appellant/applicant was not the accused in the criminal proceedings but nevertheless purported to appeal against the forfeiture of the said vehicle.

Held:
The appellant/applicant not being a party to the criminal proceedings at the Magistrate Court Sibu is not entitled to appeal against the decision of the Magistrate under s. 307 of the Criminal Procedure Code.

[Appeal invalid and motion dismissed.]

Cases referred to:
Koay Ban Siew v. PP [1948] 14 MLJ 54
Re Hillman Minx No. SU 3503 [1962] 28 MLJ 250
R v. Maidstone Crown Court exp. Gill [1986] Crim LR 737
The "Andara" [1978] 2 MLJ 190

Legislation referred to:
Commercial Vehicle Licensing Board Act 1987, s. 33
Criminal Procedure Code, s. 307(i)
Criminal Procedure Code (Cap 21) (Straits Settlement), s. 302
Road Transport Act 1987, s. 90

For the appellant/applicant - M/s. John Shek & Co. Kuching
For the respondent - Ahmad Zaki bin Haji Husin, Senior Federal Counsel

JUDGMENT

Chong Siew Fai J:

By a notice of motion, the applicant, The Public Finance Berhad, styling itself as the "appellant" applies for enlargement of time for filing a petition of appeal on the ground that it was erroneously filed in the High Court, Sibu when it should have been lodged with the clerk of the Magistrate's Court at Sibu and that by the time the mistake was discovered the prescribed time for lodging the petition had expired.

The facts as disclosed in the affidavit made in support of the motion show that an accused, one Beh anak Nyelang, was charged and found guilty for two offences under s. 33 of the Commercial Vehicle Licensing Board Act 1987 and s. 90 of the Road Transport Act 1987 in the Magistrate's Court at Sibu. He was fined and a Vehicle No. KK 4790 owned by the applicant was forfeited. It is clear that the applicant was not an accused in the criminal proceedings. It is equally plain from a copy of the purported petition of appeal (Exh. "A" annexed to the affidavit made in support) that the sole concern of the applicant is to set aside the forfeiture order made by the Magistrate's Court against the said vehicle. The sole issue is: Can the applicant, who was not an accused in the criminal proceedings in the Magistrate's Court, appeal as the applicant purported to do? Section 307(1) of the Criminal Procedure Code, so far as is relevant, provides:

> ...any person who is dissatisfied with any judgment, sentence or order pronounced by any Magistrate's Court in a criminal case or matter to which he is a party may prefer an appeal...

On the evidence as adduced, the applicant was not a party to the criminal case or matter and therefore, in my opinion, cannot appeal. *Koay Ban Siew v. Public Prosecutor* [1948] 14 MLJ 54 is a case in point. In that case the appellant Koay Ban Siew appealed against a forfeiture order of a junk of which he was the owner. Koay was not a party to the original prosecution in which the forfeiture order was made. On a consideration of s. 302 of the Settlements Criminal Procedure Code (repealed) the relevant provision of which so far as concerning the instant case is materially similar to s. 307(i) of our present Criminal Procedure Code, it was held that the appellant had no right of appeal against the forfeiture order. After reciting the relevant part of s. 302, Murray-Aynsley CJ said:

> It is abundantly clear that this section limits the right of appeal to the High Court in a criminal case or matter to a party to the case or matter.

A little later, he went on:

> ...we must decide that the "appellant" had no authority to file his petition of appeal to the High Court and that in fact there was no valid appeal before that Court at any time.

After considering s. 307(i) of our present Criminal Procedure Code and on the authority of *Koay Ban Siew v. PP, supra*, I hold that the "appellant" in the instant case has no right of appeal.

The appeal is invalid and the motion before me is misconceived and must be dismissed.

I should perhaps add, however, that procedural a person in the position of the appellant in this motion whose property is affected by a forfeiture order of a Court is, in my judgment, not without a remedy. He can, in a proper case, apply for relief by way of judicial review. See, for example, *Re Hillman Minx No. SU 3503* [1962] 28 MLJ 250; *R. v. Maidstone Crown Court ex p. Gill* [1986] Crim LR 737; *The "Andara"* [1978] 2 MLJ 190.

Also found at [1989] 2 CLJ 533